



RECEIVED  
CENTRAL FAX CENTER  
APR 30 2008

# Fax

☐ Urgent☐ Return reply requested☐ Original will be sent as confirmation**To: USPTO****Date: April 30, 2008****Attention: Examiner Leon Lankford &****Re: Appl. No. 09/960,244; Filed 09/21/01****Supervisory Patent Examiner Michael Wityshyn****For: Cell Populations Which Co-Express****From: Doyle A. Siever****CD49c and CD90****Inventors: HO et al.**

Pages (including cover sheet): 3

Fax No: 571-273-8300

Our Reference: 2560.0020000/JAG/D-S

## Message

Please see attached.

### Certification of Facsimile Transmission

I hereby certify that this paper is being facsimile transmitted  
to the Patent and Trademark Office on the date shown below.

A handwritten signature in dark ink, appearing to read "D. Siever", written over a horizontal line.

Name

Date: April 30, 2008

please sign and return this page as acknowledgment of receipt

815153\_1.DOC

If any portion of this transmission is not received clearly or in full,  
contact us at 202.371.2600 or f 202.371.2540

This message is intended for the exclusive use of the individual or entity to which it is addressed. The message may contain information that is privileged, confidential, or otherwise exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, copying or use of this communication in any way is strictly prohibited. If you have received this communication in error, please call us collect immediately, and return the original message to us at the above address via the U.S. Postal Service.

Sterne, Kessler, Goldstein &amp; Fox P.L.L.C. : 1100 New York Avenue, NW : Washington, DC 20005 : 202.371.2600 f 202.371.2540 : www.skgf.com

**Sterne Kessler  
Goldstein Fox**

**RECEIVED  
CENTRAL FAX CENTER**

**APR 30 2008**

**MEMORANDUM**

TO: Examiner Leon Lankford  
FROM: Doyle Siever *DS*  
DATE: April 30, 2008  
RE: Proposed Product-By-Process Claim for:  
U.S. Patent Application  
Appl. No. 09/960,244; Filed: September 21, 2001  
For: **Cell Populations Which Co-Express CD49c and CD90**  
Inventors: HO *et al.*  
Our Ref: 2560.0020000/JAG/D-S  
  
ART UNIT: 1651

---

**Proposed Product-By-Process Claim:**

Applicants submit herein a proposed product-by-process claim for the Examiner's consideration. This claim is submitted in view of the April 3, 2008 interview between representatives for the Applicants (Jorge Goldstein, Esq. and Doyle Siever, Esq.) and Examiner Leon Lankford. At this interview, the Examiner agreed to consider the allowability of a product-by-process claim in the above-referenced patent application.

The claim proposed herein is not currently being submitted as a Supplemental Amendment to the currently pending claims. Instead, Applicants respectfully request comment from the Examiner regarding whether or not the Examiner would allow a product-by-process claim such as this, if it was submitted in a Supplemental Amendment.

RECEIVED  
CENTRAL FAX CENTER

APR 30 2008

*Proposed Claim:*

97. An isolated cell population obtainable from human bone marrow by steps that comprise:

- a) incubating human bone marrow cells under a low oxygen condition such that said cells when allowed to adhere to a tissue culture-treated surface will produce adherent colony forming units (CFU); and,
- b) passaging cells in said adherent CFU at a seeding density of less than about 2500 cells/cm<sup>2</sup>,

wherein greater than about 91% of said passaged cells co-express CD49c and CD90, and wherein said passaged cells maintain a population doubling rate of less than about 30 hours after 30 cell doublings.

Support for this claim can be found throughout the application as filed. For example, support can be found in the specification at: page 12, lines 4-5; page 14, lines 16-23; and, page 25, line 9 to page 30, line 2.

Applicants kindly request that the Examiner contact applicants representative, Doyle Siever, Esq., (Office: 202-772-8867; Email: [DSiever@SKGF.com](mailto:DSiever@SKGF.com); Fax: 202-371-2540), with respect to allowability of this claim, or any comments which may further assist in reaching an agreement with respect to allowable claims.

815033\_1.DOC